

MINUTES  
**WARRICK COUNTY AREA PLAN COMMISSION**  
Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, September 14, 2015 6:00 PM

**PLEDGE OF ALLEGIANCE** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President; Bill Byers, Amanda Mosiman, Brad Overton, Richard Reid and Jeff Willis. Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** Jeff Valiant

**MINUTES:** Upon a motion made by Amanda Mosiman and seconded by Brad Overton, the minutes of the last regular meeting held August 10, 2015, were approved as circulated.

The President explained the Rules of Procedure to the audience and stated any rezoning receiving a recommendation this evening will be forwarded to the County Commissioners meeting on October 12, 2015 at 4:00 p.m. for final approval or denial.

**REZONING PETITIONS:**

**PC-R-15-12 – Petition of Bel Air Land, LLC, Brian Wedding, CEO** to rezone 0.8 acres being Lot 80-C in the Replat of Lots 80-81 in Triple Crown Estates recorded in Plat File 1 Card 421 in the Office of the Warrick County Recorder, Ohio Twp. from “C-1” Neighborhood Commercial to “C-3” Highway Commercial zoning district. *Advertised in the Standard September 3, 2015.*

Rene Van Tassell, Attorney for Wedding Holdings and Bel Air Land was present.

The President called for a staff report.

Mrs. Rector said they have submitted all the return receipts from certified mail to the adjacent property owners. She explained this is a .82 acre lot and the Comprehensive Plan projects this area to be commercial. She further explained the existing building was used as a floral shop and the surrounding property to the east and west are zoned “C-1” Neighborhood Commercial with commercial businesses; the property to the south is zoned “R-3” Resort being part of Triple Crown Estates, a residential subdivision and the property to the north is zoned “C-4” General Commercial with Walmart and vacant lots, which is across SR 66. Mrs. Rector said the lot lies within a 100 Year Flood Plain and in order for any permits for the building to be given in the flood plain the BFE will have to be established and a certified plot plan will need to be submitted certifying first floor elevations are at least 2 feet above the BFE. She said the access to this lot is off Ruffian Lane and the stated use is a used auto sales which is allowed in the proposed zoning but it is not allowed in the current “C-1” zoning. Mrs. Rector added they have obtained a Hold Harmless Agreement with the Warrick County Drainage Board giving consent for

the placement of concrete pad up to 40' from top of bank of Edwards Ditch. She said this relaxes the existing 75' legal drain easement and allows them another 35' for parking only. She further added they still need a consent agreement to allow them to park cars in the 70' Vectren easement. She said the application is in order. She also added there was not a Use and Development Commitment submitted and they are strictly asking for a "C-3" zoning.

Ms. Van Tassell said she had nothing else to add at this time.

The President called for comments from the Board.

Brad Overton asked if the proposal was for a car lot.

Ms. Van Tassell said that is correct and she hopes they take it easy on her because this is her first time doing this.

Guy Gentry asked if there was any discussion with the owner about the chance of a Use and Development Commitment. He said many times...he understands they want to put in a used car lot but it that goes by the wayside in a month and the property is zoned "C-3" anything that is allowed can go there. He said he wonders if there has been any discussion with her client in that regard.

Ms. Van Tassell said they did discuss the issue and they decided that they would go ahead and do it without the restrictions on it and if there were any concerns from the community on certain issues they would address them at that time and be willing to consider it.

Bill Byers said that would have to be addressed right now before they vote.

Rick Reid commented in extending the parking lot will shore up with the other property owners won't it.

Ms. Van Tassell said that is correct. She said she believes it is about 37.8 feet allowance they received.

Rick Reid said that will allow them more parking.

Ascertaining there were no other questions from the Board the President called for remonstrators.

Marc Hancock, 4011 Citation Drive, said he read the factors to consider a rezoning application and he feels this project is a "no" on almost every one of them. He said he also fears test drives through the neighborhood because there is no access on to the highway except through the neighborhood. He said you get a young kid driving an exotic sports car and there are kids walking home from school, anything can happen. He said the back of this business will be facing their neighborhood. He said they have been to his other car lots in Evansville and though it is not identical to their neighborhood, there are trash piles, tires, parts of cars and 6' hurricane fences on some of them. Mr. Hancock said in a car lot you try to close the lot off on evenings and weekends and every car lot pretty much parks cars in the driveway. Mr. Hancock said these cars all have giant signs on them and it almost like another billboard 24/7 and they will suffer through that. He added there will be "lookie loos" nights and Sundays and they will either park on their streets on Ruffian Lane or park on the side business and walk to it. He said they also walked the neighborhood for a mere 3 hours and received 40 signatures against this. He said a lot of people weren't home and very few people wanted to think about it – almost everybody was against this project.

He said they also fear what will come after he changes business. He said the “C-3” stays a “C-3”. He added Mr. Wedding also owns a roofing business and there is a possibility of roofing crews in there night and day if that works out for him. He said he is an entrepreneur and he could put almost anything under the sun under that “C-3” category. He said with the advent of not having a direct access onto the highway and the “C-3” staying, that is what they fear as a community the most.

Guy Gentry said they don’t have any listing of 40 names in their packet.

Mr. Hancock said they sent it in and were given the impression they would all get a copy.

Mrs. Rector stated she was unaware of any petition.

After further discussion Mrs. Rector stated she did find the petition in the folder and she apologized to the remonstrators because it is the normal practice to have copies in the Board members packets and it should have been in the staff report.

Jane Gordon said she lives in Triple Crown also. She said the Hancock’s driveway backs into this place but her home is across the street and when she sits on her front porch in the morning for her coffee that is her view. She said Mr. Hancock mentioned a concern about the roofers – there are already Jasper Roofing trucks in the driveway. She said they have been there for weeks and she has great concern. She said she bought her house fifteen years ago when she moved back to be near family and she is worried about her property values and it isn’t going to be nice to look at. She said she also has the same concerns about what happens when they go out of business. She said she doesn’t know how they can survive. She said all the cars on the AT&T lot was totaled because of the flooding and so if they have fifty \$70,000 cars and then have to file a \$3.5 million insurance claim she doesn’t know how they will continue so she does worry about what will come next too because she has a straight look at it from all her front windows. She said at least the Zeidlers had landscaping and a tree and it wasn’t noticed as much as a car lot. She said she appreciated the Board’s time and she has a lot of concerns – safety – flooding. She said the water problem goes all the way down to the financial building at the corner. She said there is a ton of kids in the neighborhood also and she doesn’t know how they will be able to do that with a “C-3” zoning. She said it just doesn’t make any sense and if they would just do a drive by they would see clearly why they are concerned and it doesn’t make sense for the community.

Kristi Senger said she is a newer resident to the community. She said they bought their house last year after her husband retired from the Air Force. She said in buying her house she had her realtor check out the zoning of the neighborhood businesses in front of them because it was a concern. She said she was ok with the “C-1” Neighborhood Commercial because it is basically convenience shops and it has been convenient and they use them quite often. She said she is concerned about a car lot opening up there because she has two young children who don’t run in the streets but they do play in the neighborhood quite often and it is a nice neighborhood. She then submitted some photos of their other properties to the Board. (Copies on file) She said they do have piles of tires and other things you would expect to see at a car lot. She said right now they say it will be a luxury car lot but what about in five years. She said there is another luxury car lot in Newburgh that has already gone through several owners, two in the year she has been back. She said her biggest concern is the property to either side of this lot. She said this is a smaller lot but the lot right next to it is much larger and if this gets a zoning to “C-3” what would be

blocking the larger lots from getting a rezoning. She said that opens them up to all the “C-2” as well like a bar or a nightclub and she is concerned about that and she hopes they will take that into account. She also said another thing that bothers her is that is so zoned wrong and they bought it anyway and have already started taking out windows and doors and getting ready to put cars on the property. She said it just seems like they think they already have the zoning. She thanked the Board for their time.

Jane Beckham said she doesn’t live in this neighborhood but she does live in Newburgh and has for over thirty years. She said she loves Newburgh and when you come in on SR 66 you see offices and similar businesses and this residential area was there before a lot of other things came along. She said they now have to endure the changes and everyone is for change to make the community better but do it in reference to what people are asking. She said they need to keep the property “C-1”. She commented there is a nursing home down at the end of the street and they need to worry about people on scooters and wheelchairs and take that into consideration.

Michael Knight said his concern in making it a “C-3” takes it out of harmony of the neighborhood. He said the neighborhood is dental offices, law offices, mortgage brokers, restaurants, ice cream parlor and a flower shop. He said now they want to make it a car lot and that doesn’t sound too bad but the “C-3” opens it to a lot of things. He said if they would keep it a “C-1” and have a business there then no one would be here. He said in a “C-3” they can pile things there and it will attract rodents and a lot of unsightly characters especially if it becomes a roofing business. He said Jasper Roofing has been parked there ever since Zeidler’s left. He said they are saying it is going to be a car lot but why are the roofing trucks sitting there. He said roofing companies need roofing supplies and will someone be there unloading those supplies and then that will block traffic. He said this is just not compliant with the neighborhood and it doesn’t fit. He said they were there first and he feels like that should have some bearing. He said it will disrupt the harmony of the neighborhood and ask they consider that when they make their decision.

Ascertaining there were no other remonstrators the President called for rebuttal.

Ms. Van Tassell said she appreciates their comments and they do hear what the neighbors are saying. She said this isn’t an issue of spot zoning, there is plenty of areas in the adjacent properties that are “C-4” and “C-3”; yes there are some “C-1” zonings there but most of this is commercial property and so changing this from a “C-1” to a “C-3” is not going to be spot zoning and it really is in harmony with the neighborhood. She said as far as the roofing trucks being there, they had to replace the roof. She said they did start working on the building in order to make it look better. She said the people who will be buying their cars will be good people like the neighbors, not 18 year olds test driving a \$50,000 S Class at 80 mph down Ruffian Lane. She said it will be people who work hard for their money and who want to invest in something nice because they have put in the hours at work and want a prize at the end of the day – they are grownups, they are not 21 year olds going to be drag racing down Ruffian Lane. She said while she understands where the concerns come from, she feels like it is not representative of the type of clientele they will have at their business.

Ms. Van Tassell said as for the drainage issue that is something that they have addressed and they don’t have a problem with the property. She said when they bought the property it was actually brought to their attention very late in the transaction that it was zoned “C-1”. She said as soon as that came to her

attention they just purchased a piece of property she checked the zoning. She said this is in a great neighborhood; it is right off the main drag and across from a super WalMart and it has great exposure and they wanted the property. She said they want to put a luxury dealership there and they feel it is a great place for it. She said driving down the main strip there you see commercial businesses; there is a lot in the neighborhood. She said no one thought to check the zoning so it isn't a matter of them buying it and trying to force it down anyone's throat. She said they have replaced the roof and that is why the trucks are there; they have no intention of opening up a roofing business there. She said they aren't even actually roofing in Indiana right now they are mainly focused in Florida and so they would have no need to have crews or supplies there and that isn't their business model anyway. She said so she hears their concerns about loading and unloading but their business model is they buy from outside companies and have it delivered. She so said even if, which it isn't, they were to go down that rabbit hole there wouldn't be loading and unloading of supplies. She said their crews don't come back to the offices – that just isn't the way their business model works. Ms. Van Tassell said Newburgh is a great town and it is beautiful and it has great people who work hard for their money and they deserve a prize at the end of the day like drive a nice car or hang out in a pretty place to buy something they are going to spend a lot of money on.

Brad Overton said years ago he lived in an apartment and they would always go to the video store to rent movies and the nice thing about that neighborhood is that it isn't a neighborhood completely out of scale and unattainable for people. He said in some areas it is very difficult to find houses that don't take \$500,000 and he thinks that is what is so nice about this neighborhood. He said to him it is quiet and low key. He said one thing he remembers is trying to get out of the area is the curbs are so high and it felt like your car was going to rip off the bottom. He said in his opinion it doesn't seem like this will be an ideal fit for that particular place. He said that is just his concerns about it.

Jeff Willis said he is more worried about other uses that are allowed in a "C-3".

Amanda Mosiman asked if they are planning on it being just car sales, not car repair.

Ms. Van Tassell said just car sales. She said there really isn't even space for it.

Amanda Mosiman said she would be a lot more amiable with a Use and Development Commitment.

Ms. Van Tassell said if there is restrictions they want – it is something that came up after they already started this. She said they have no problem saying no liquor store or nightclub – the big things that are concerns for the neighbors.

Mrs. Rector said they do have the option to amend the application to include a Use and Development Commitment including or excluding certain uses or they could limit it to just one use but because it wasn't advertised with a Use and Development Commitment she doesn't think the Board could approve one tonight because it doesn't exist. She said they will have to amend the application and re-notice the adjacent property owners and this would have to be continued to another meeting.

Attorney Doll said that is correct.

Mrs. Rector said it is up to them to decide how to proceed. She said if they recommend denial it can't be heard again for six months or they can ask to continue and amend it.

Ms. Van Tassell asked if they can have a brief recess in order for her to consult her client.

Mrs. Rector said she isn't saying the Board is going to deny it or approve it, she just wants her to know her choices.

Ms. Van Tassell said she completely understands and appreciates the advice.

Rick Reid asked if the "C-3" would be only for a car lot then.

Mrs. Rector said she doesn't know what they will or won't limit it to.

Rick Reid asked if it would revert back to "C-1".

Mrs. Rector said the zoning doesn't revert back and they can only use it for what is stated or they have to come back with another rezoning.

Ms. Van Tassell asked if it is possible to list the neighbors concern, no hotel, liquor store, and nightclub and restrict those things.

An unidentified woman called out a car lot is another thing they don't want there.

The President stated they have to come to the podium to speak in order to transcribe the minutes. He then called a three minute recess at 6:27 p.m.

The meeting reconvened at 6:30 p.m.

Ms. Van Tassell said she spoke with Mr. Wedding and said she appreciates them giving her the time to do so. She said in discussing the concerns they feel that it isn't necessarily a concern about the other issues involved with a "C-3" zoning, which again is not a spot zoning, this is the vein of the community and it is what that neighborhood is zoned. She said there are two properties zoned "C-1" and then everything else is "C-3" and above and so they are just asking what the neighborhood is. She said when she spoke with Mr. Wedding they discussed the issues and they feel that even if they would put a restriction on the zoning after hearing from the community members, they don't want a car dealership and so they don't feel even putting a restriction on there would make them happy. She said they feel the neighbors are just opposed to the idea itself and they welcome and hear their comments but they are still asking for the "C-3" zoning.

The President called for a motion.

Amanda Mosiman made a motion to forward PC-R-15-12 to the County Commissioners with an unfavorable recommendation. The motion was seconded by Brad Overton. Richard Reid abstained from voting and all other members voted for the motion.

The President stated this petition will be forwarded to the Board of County Commissioners on October 12, 2014, at 4:00 p.m. in this room with a recommendation of denial. He said the Commissioners have the final say; they do not have to follow this Board's recommendation.

**PC-R-15-13 – Petition of Affordable Builders of Indiana LLC, Doug Lewis, Managing Member. OWNER: Allan R. Holweger** to rezone 4.18 acres being Lot 12 in Orchard View Condominiums PUD Sec. 1C recorded in Doc. # 2013R-005571 in the Office of the Warrick Co. Recorder and part of Orchard View Condominiums PUD Sec. 1 recorded in Doc. # 2008R-002832 in the Office of the Warrick Co. Recorder located on the E side of Taylor Dr approximately 0' NE of the intersection formed by Taylor Drive and Park Place Dr., Ohio Twp. from PUD/C-4 (Planned Unit Development consisting of C-4 General Commercial) to PUD/R-2 (Planned Unit Development consisting of R-2 Multiple Family Dwelling. *Complete legal on file. Advertised in the Standard September 3, 2015.*

Doug Lewis and Jim Biggerstaff were present.

The President called for a staff report.

Mrs. Rector stated they have submitted all the return receipts from certified mail of notice to the adjacent property owners. She stated this is 4.18 acres and the Comprehensive Plan projects the area to be commercial. She added the property is currently vacant and the surrounding property to the north is zoned "C-4" General Commercial PUD with duplex homes and a vacant lot. She added the rest of the surrounding property is zoned "C-4" General Commercial with businesses to the east and south and duplexes to the west. She said there is no flood plain on the property and the access will be off Taylor Drive. She said the proposed use will be condominium units which are allowed in this zoning. She said the primary plat was already approved and that does not change. She said all they are doing is changing the zoning and this is because they are finding banks no longer want to approve loans for residential uses on commercially zoned property. She said at the time this was the Engelbrecht Orchard it was zoned "C-4" and the Ordinance then and still allows single family homes in a "C-4" zoning but now the banks are looking negatively at that. Mrs. Rector said they want to not have any difficulties with financing for their future purchasers and so they have filed this rezoning petition. She said this is actually a good zoning going from commercial to residential. She said she has said before that they (Board) may want to consider in the future changing the ordinance to not allow residential in commercial zoning but that is another time. She said this is just making it residential as it should be.

Doug Lewis said they are building very similar units here as they have done across the street. He said they are single story units with two, three or four units per building. He said they are not lots of changes to the structures and really all they are doing is getting the zoning correct.

Mrs. Rector said they will be held to what was approved on the primary plat and what they are showing on these plot plans. She said none of that has been changed.

Doug Lewis said they are just trying to make it right.

Ascertaining there were no questions from the Board the President called for remonstrators.

David Matzen, 7749 Ande Dr. said he just a few questions. He questioned who adjacent property owners are and who got noticed because he owns a condo in this area.

Mrs. Rector explained who the adjacent owners are and who got notice.

David Matzen asked what lot they are talking about because he doesn't understand what they are doing.

The President explained where the property is and what they are planning to do and where the entrance will be.

Mrs. Rector said this plat has already been approved and all they are looking at tonight is the zoning.

Mr. Matzen said he didn't understand that.

Richard Reid stated they may want to rezone their property as well and take it out of the commercial zoning. He said what they are having trouble with is certain banks won't loan on commercial property. He said that is Fannie Mae and Freddie Mac that is dictating that.

Mr. Matzen said so his property is zoned commercial.

Mr. Reid said technically anytime you step down in zoning it is pretty much a slam dunk and that is all they are doing is going down to an "R-2".

Doug Lewis said they don't have a problem selling the units, it is just the bank won't loan the money because of the zoning.

Mr. Matzen asked if the condo owners or the homeowners association get the change from "C-4" to "R-2".

Mrs. Rector asked if they own part of the yard or just the unit.

Mr. Matzen said he owns the unit and the common area belongs to the association which is everything outside the walls.

Mrs. Rector said then they would all have to be a party to the rezoning. Mrs. Rector said they are in legal conformance with the ordinance right now, it has nothing to do with the Plan Commission, it is the banking and so they are not saying they have to rezone.

Mr. Matzen said he understands they are just making a recommendation to them.

An unidentified woman asked if this will be apartments to which it was again explained the units will be just like what she owns.

Mrs. Rector said they are only allowed four units in an "R-2" zoning so it can't be apartments.

An unidentified woman asked why they have to come off Taylor Drive.

The President again stated they need to come to the podium to speak in order to get their comments in the minutes.

Mr. Matzen asked if he can have a copy of the plat, to which a copy was given so the audience could see it.

Ascertaining there were no other remonstrators or comments from the Board, the President called for a motion.

Brad Overton made a motion to forward PC-R-15-13 to the County Commissioners with a recommendation of approval. The motion was seconded by Richard Reid and unanimously carried.



The President stated this petition will be forwarded to the Board of County Commissioners on October 12, 2014, at 4:00 p.m. in this room with a recommendation of approval.

Amanda Mosiman left the meeting at 6:50 p.m.

**AMENDING ORDINANCE TO THE SUBDIVISION CONTROL ORDINANCE:**

**AN ORDINANCE TO AMEND ARTICLE II SECTION 2 TERMS DEFINED SUBSECTION (45) SUBDIVISION OF LAND AND SUBDIVIDE BY ADDING SUBSECTION (C) LOT LINE ADJUSTMENTS OF THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA** *Advertised in the Standard September 3, 2015.*

The purpose of this ordinance is to add lot line adjustments.

Mrs. Rector explained this was brought about because of a person who owns property right out of the City Limits of Boonville whose property is zoned residential. She said there are two property owners and one of them constructed a garage across the property line. She said in the ordinance right now they can't do a lot line adjustment on any ground other than Agriculture or in a recorded subdivision where they can do a replat. She said in this instance they would have to do a full subdivision to move a property line ten feet and she thinks that is too much. She said they used to have lot line adjustments in the ordinance but when it was redone in 2005 for some reason it was left out. She said she is just trying to make it so an individual that just needs to move a property line a few feet can do a lot line adjustment which is basically the same thing as a parcelization in an Agriculture zoning. She said that would keep people from having to go through all the public hearings just to do that.

The President stated it is written clearly and limits the amount of change allowed.

Brad Overton made a motion to approve the amending ordinance. The motion was seconded by Rick Reid and unanimously approved.

The President stated this will be forwarded to the County Commissioners with a recommendation of approval on October 12, 2015 at 4:00 p.m.

**OTHER BUSINESS:**

**Formal Complaint:** Henry & Mary Lunenburg, 5488 Lee Acres Drive, Boonville, IN ~ Violation of Yard Sale Ordinance ~ Cease and desist letter sent July 23, 2015 and resent July 31, 2015.

Mrs. Rector stated this was on the agenda last month and no one was present. She stated Dennis Lockhart has been to the property several times and has reported there are no yard sales being conducted.

Brad Overton made a motion to remove the item from the agenda and close the file. The motion was seconded by Bill Byers and unanimously carried.

**Formal Complaint:** Vladimir Tonchev, 6088 Grand River Rd. ~Alleged junk/salvage yard in "R-2A" Two Family Dwelling zoned district.~ Cease and desist letter sent July 6, 2015.

Mrs. Rector stated there were a lot of junk cars on the property when Dennis Lockhart went to the property and we wrote them a letter and told them to contact the office and to be at the August meeting. She said the item failed to be placed on the agenda, however, they never appeared. She said the Ohio

Township Trustee, Chad Bennett came into the office the other day with a complaint about grass on an adjacent property and he had taken photos showing the cars are still on the property. She asked if they want her to write another letter telling them to appear next month or have Morrie write a letter or what.

Brad Overton made a motion to have Attorney Doll write them a letter saying the cars need to be gone by October 9<sup>th</sup> or appear at the October 12, 2015 meeting. The motion was seconded by Jeff Willis and unanimously carried.

### **Microbreweries/wineries**

Mrs. Rector said she has questions about this still and will send them all an email so she would like for this to be tabled.

Brad Overton made a motion to table this to the next meeting. The motion was seconded by Rick Reid and unanimously carried.

### **Chickens/Urban zoning**

The President stated Amanda Mosiman had to leave the meeting and she is the one working on this.

Attorney Doll said he and Amanda have discussed this and he asked for it to be continued to next month.

Brad Overton made a motion to continue to the October meeting. The motion was seconded by Jeff Willis and unanimously carried.

### **ATTORNEY BUSINESS:**

Attorney Doll said the Wolfe property on Lincoln Ave. was cleaned up last week. He said the Wolfe property on Jamestown wasn't too bad apparently. He said they have two other violations pending.

The President stated on the Jamestown property it wasn't too bad but it is also locked up/boarded up and going through foreclosure.

Attorney Doll said there is a bankruptcy pending but relief from stay has been granted to the bankruptcy so the bank can foreclose so it should be cleaned up. He said the bankruptcy would keep the County from cleaning it up unless they asked for a stay but why would they because the bank will clean it up.

### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector passed a photo of a portable tent like car port that someone wants to put up between his house and his garage. She asked if this is actually a structure because all structures have to be ten feet from each other and this person will have to file for a Variance because it won't be ten feet from his house or his garage. She said this is basically a glorified tent.

Attorney Doll read the definition of structure from the ordinance.

After discussion of intent, the Board gave a consensus this type structure is not a structure and they do not need a permit.

Being no other business the meeting adjourned at 7:00 p.m.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director